



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

IN REPLY REFER TO:

5720

ARSF-F1/12U100046

JAN 17 2012

MUCKROCK NEWS
ATTN MR JASON SMATHERS
DEPT MR 788
PO BOX 55819
BOSTON MA 02205-5819

Dear Mr. Smathers:

SUBJECT: FILE NUMBER HQMC-201100225

This refers to your February 17, 2011, Freedom of Information Act (FOIA) request by which you seek to obtain copies of the CMC Twice Monthly reports generated in 2011. This also follows-up my correspondence to you of May 25, 2011.

Please be advised that, although you infer that you should be granted media requester status, I fail to see where you have adequately demonstrated how you meet the three following required standards necessary for qualification as a representative of the news media:

(1) the requester must be a person or entity whose primary purpose is the gathering of information of potential interest (news) to a segment of the public [the FOIA defines news as information that is about current events or that would be of current interest to the public],

(2) the requester must use his/her editorial skills to turn the raw materials into a distinct work, and

(3) the requester must distribute that work to an audience.

While you indicate that you will make the documents "available to the public free of charge as part of the public information service at MuckRock.com" and that the information is being "made in the process of news gathering," you fail to adequately demonstrate how you plan to editorialize the data contained in the CMC reports into a unique distinctive news product nor have you demonstrated how the information contained in the CMC reports is considered to be about current events or how it is of current public interest.

Additionally, you have requested a "public interest" fee waiver. However, such statement alone does not automatically entitle you to a waiver of fees. Requests for fee waivers must be considered on a case-by-case basis. The granting of a fee waiver for one request does not mean that a fee waiver will automatically be granted on a later related request from the same requester. In order to determine whether the statutory requirements are met, the Agency must consider six factors summarized below:

(1) The subject matter of the requested records must specifically concern identifiable operations of activities of the government. Request for records for their informational content alone does not satisfy this factor.

(2) The disclosure of the requested records must be "likely to contribute" to the public understanding of government operations. The requested records must be meaningfully informative in relation to the subject matter of the request and should not already be in public domain.

(3) The disclosure of requested records must contribute to "public understanding of government operations." Disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. One must demonstrate with reasonable specificity the ability to understand, extract, and convey the requested information as well as the ability and intent to actively disseminate the information to the general public.

(4) The disclosure must contribute "significantly" to public understanding of government operations or activities. On balance, the public's understanding of government operations must be significantly greater after disclosure in comparison to the public's understanding prior to disclosure.

(5) The extent to which disclosure will serve the requester's commercial interest, if any. Status as a nonprofit organization or representative of the news media is not alone sufficient to satisfy this requirement.

(6) The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest.

In establishing fee waiver justification to the above criteria, a FOIA requester should provide a clear statement documenting (1) his/her interest in the requested documents and whether he/she will derive income from the proposed use, (2) how the public will benefit from such use and from the release of the requested documents, (3) if specialized use of the documents or information is contemplated, a statement of his/her qualifications that are relevant to the specialized use, (4) how he/she plans to disseminate the documents or information to the public, and (5) any additional information he/she deems relevant to the fee waiver request.

Based on the information provided in your letter, I have determined that your justification does not adequately address or answer the above questions, particularly with regard to items (2) and (3). Accordingly, I have determined that your request does not meet the threshold for granting a fee waiver under Department of Defense (DoD) regulations published at 32 C.F.R. § 286.28(d). Your justification does not demonstrate that disclosure of the requested information is likely to contribute significantly to the general public's understanding of the information you are seeking.

As a result of a records search at this Headquarters, the Office of the Director, Marine Corps Staff (DMCS) personnel apprised that the requirement for generation of the CMC twice-monthly reports was converted to a monthly requirement sometime in 2009. Accordingly, while the requested twice-monthly reports do not exist, the CMC monthly reports are considered responsive to your request. However, because the effort entailed more than just DMCS files but also involved a search of all HQMC Department/Divisions for their input documents, the only CMC monthly report identified and provided this office at this time is a 42-page CMC monthly report dated January 19, 2011. Your free search entitlement has now been exhausted the only CMC monthly report identified and provided this office at this time is a 42-page CMC monthly report dated January 19, 2011. Your free search entitlement has now been exhausted.

Review of the January 19, 2011, CMC monthly report revealed that it identifies intelligence sources and methods of the U.S. Marine Corps that are precluded from public release by 50 U.S.C.A. §

403.1(i) and 5 U.S.C. § 421. Accordingly, since this type of information is exempt from FOIA disclosure [5 U.S.C. § 552(b)(3), as amended], the applicable intelligence sources and methods have been redacted and are denied.

Further, the January 19, 2011, CMC monthly report contains executive privilege, interagency, pre-decisional, subjective opinion and recommendation that if disclosed would chill the free and candid exchange of advice and recommendations during the Agency's decision making process. Accordingly, since this type of information is exempt from FOIA disclosure [5 U.S.C. § 552(b)(5), as amended], the applicable pre-decisional subjective opinion and/or recommendations have been redacted and are denied.

Finally, the January 19, 2011, CMC monthly report contains third-party personal information which, if disclosed, would constitute a clearly unwarranted of the personal privacy of those individuals. Accordingly, since this type of information is exempt from FOIA disclosures [5 U.S.C. § 552(b)(6), as amended], the applicable third-party personal information is redacted and denied.

Attached at the enclosure is a CD-ROM containing a FOIA releasable copy of the January 2011, CMC Monthly Report. I have categorized you as an "Other" requester for the purpose of assessing FOIA processing fees. As such, you are entitled to two hours of search and 100 pages of duplication at no cost to you. However, because "Other" requesters are responsible for the payment of any search and/or duplication fees that exceed their free entitlement. In this instance, however, since processing costs do not exceed your free entitlement, there are no billed fees for the processing of this request.

In view of the above, you may consider this an adverse determination that may be appealed to the Judge Advocate General of the Navy, Judge Advocate General (Code 14), 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374-5066. Your appeal, if any, must be postmarked within 60 calendar days from the date of this letter to be considered and should include a copy of your initial request, a copy of this correspondence, and a written statement indicating why you believe your appeal should be granted. I recommend that your appeal and its envelope both bear the notation "Freedom of Information Act Appeal."

Questions concerning this action may be directed to Ms. Mary Malone of my staff at (571)256-8633. Please refer to the subject line file number whenever corresponding on this matter. I am the official responsible for this determination.

Sincerely,

A handwritten signature in black ink, appearing to read "Teresa D. Ross", with a large, stylized flourish at the end.

TERESA D. ROSS
Head, FOIA/PA Section (ARSF)
Security Programs and Information Mgmt Branch
Administration and Resource Mgmt Division

Enclosure

ENCLOSURE